

INDIANAPOLIS DEPARTMENT OF WATERWORKS
BOARD OF DIRECTORS

RESOLUTION NO. 16, 2005

APPROVAL OF CAPITAL PROJECTS

WHEREAS, the Department of Waterworks (the "Department") has entered into that certain Management Agreement dated as of March 21, 2002 (the "Management Agreement"), with Veolia Water Indianapolis, LLC ("VWI") for the operation of the waterworks assets;

WHEREAS, the Department has certain duties and obligations under the Management Agreement;

WHEREAS, under the terms of the Management Agreement, VWI may be authorized from time to time by the Department, in exchange for payment by the Department of a certain valuable consideration, to undertake certain Capital Projects (as defined in the Management Agreement) as the Department may deem advisable;

WHEREAS, the Board of Directors (the "Board") of the Department desires to authorize the Director of Contracts and Operations in consultation with the Office of Corporation Counsel and the Controller's Office to enter into those certain Capital Projects pursuant to the terms and conditions of those certain Capital Project Authorization documents set forth as Exhibit A through Exhibit D attached hereto and made a part hereof (the "Authorization Documents"); and

WHEREAS, VWI, the Director of Contracts and Operations of the Department and the Office of Corporation Counsel have determined that such Capital Projects set forth in the Authorization Documents are desirable, appropriate and advisable;

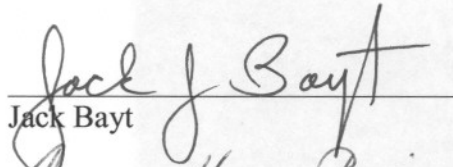
NOW, THEREFORE, BE IT RESOLVED by the Board that it hereby approves of the Department's entry into the Authorization Documents;

BE IT FURTHER RESOLVED by the Board that the Director of Contracts and Operations of the Department in consultation with the Office of Corporation Counsel and the Controller's Office is hereby authorized and directed to: (i) prepare, execute and deliver the Authorization Documents and every other document, certificate, instrument, agreement or affidavit as may be necessary, convenient or proper to effectuate the intent and purposes of the Authorization Documents, as appropriate; (ii) prepare, execute and deliver each and every document, certificate, instrument, agreement or affidavit as may be necessary, convenient or proper to effectuate the intent and purposes of these resolutions, as appropriate; and (iii) to take any and all such additional action as may be necessary, convenient or proper to effectuate the intent and purposes of these resolutions, as appropriate; and

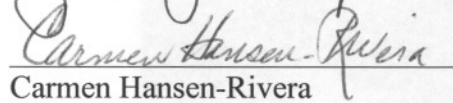
BE IT FURTHER RESOLVED by the Board that it ratifies any and all actions of the Director of Contracts and Operations, the Controller's Office and the Office of Corporation Counsel previously undertaken as may have been necessary, convenient or proper to effectuate the intent and purposes of these resolutions.

ADOPTED during a meeting of the Board this 21st day of April 2005.

**CONSOLIDATED CITY OF INDIANAPOLIS,
DEPARTMENT OF WATERWORKS,
BOARD OF DIRECTORS**

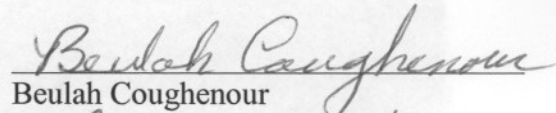


Jack Bayt

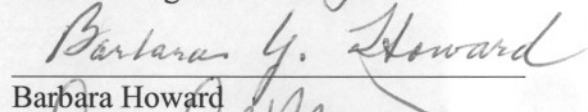


Carmen Hansen-Rivera

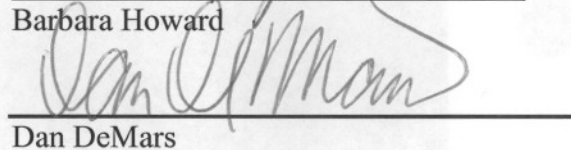
Samuel L. Odle



Beulah Coughenour

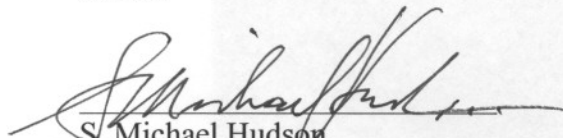


Barbara Howard



Dan DeMars

Attest:



S. Michael Hudson,
Secretary-Treasurer

Capital Project Authorization Number: 2005-003-Amended

CAPITAL PROJECT TITLE: White River Purification Plant 84-MGD Filter Upgrade		
CAPITAL PROJECT NUMBER: 2005-003	TYPE OF PROJECT: Infrastructure	<input type="checkbox"/> DOW Funded Capital Project <input checked="" type="checkbox"/> Bond Funded Capital Project
ESTIMATED START DATE: January 1, 2005	ESTIMATED COMPLETION DATE: February 6, 2006	
CAPITAL PROJECT PRICE: From \$799,000 to \$699,000		
ATTACHMENTS: (A) Description of Work; (B) Requisition _____; (C) _____		

THIS AGREEMENT (also called the "Authorization"), is entered into as of the Effective Date indicated below, by and between
CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF WATERWORKS and **VEOLIA WATER INDIANAPOLIS, LLC** (individually a "Party," and collectively the "Parties"),

WITNESS THAT:

WHEREAS, the Parties have, on March 21, 2002, executed the Management Agreement, which is hereby fully incorporated by reference into this Agreement (NOTE: capitalized terms used in this Agreement shall, unless otherwise specifically stated, be as defined in the Management Agreement), which shall take precedence in the event of any conflict between the terms hereof and those of the Management Agreement; and

WHEREAS, under the terms of the Management Agreement, the Company may be authorized from time to time by the Department, in exchange for the payment by the Department of a certain valuable consideration, to undertake certain Capital Projects as the Department may deem desirable; and

WHEREAS, the Company, when so authorized by the Department, is obliged to execute those Capital Projects in a timely, workmanlike, efficient manner, in full compliance with all Applicable Laws and Prudent Industry Practices; and

WHEREAS, the Parties hereby wish to memorialize their agreement on the particulars of a specific, authorized Capital Project.

NOW, THEREFORE, in consideration of the premises, covenants, agreements and undertakings hereinafter provided, the Parties hereby agree that:

1. **The Capital Project.** By this Authorization, the Department hereby authorizes and directs the Company to undertake and complete the Capital Project described in Attachment A (hereinafter referred to as the "Work"), and to exert its reasonable best efforts to complete the same by the Estimated Completion Date indicated above
2. **Method and Amount of Compensation.** In consideration of the foregoing, the Department shall compensate the Company the Capital Project Price, as the work progresses, in the following manner and amounts:

[] Unit Prices: _____

[X] Time and Materials: \$699,000

[] Lump Sum: _____

[] Combination/Other: _____

Explanatory Note (if req.): _____

PAYMENT: Department shall pay Company on a percentage-of-completion basis as the Work progresses. In no event shall the Department be required to pay for work not yet done.

Company shall submit progress invoices monthly during the course of the Work. Payment will be made by the Department within thirty (30) days of receiving an invoice. Each invoice shall be annotated with the Department's assigned project designation, and shall be in sufficient detail to allow reasonable analysis of the invoice by the Department.

Company accepts exclusive liability for payment of federal and state payroll taxes and for contributions for unemployment insurance, old age pensions, annuities, retirement, and other benefits, imposed under any provision of any law, and measured by remuneration paid or payable by Company to employees of Company engaged in the Project or in any incidental operation. Company will require that each subcontractor who performs any part of the Project accept the same responsibility and liability with respect to employees of that subcontractor.

Contemporaneously with the Department's final payment to Company, Company shall provide the Department with a signed Waiver of Liens from itself and from each and every service provider, vendor, or subcontractor that has provided labor, services, materials or equipment in connection with the Project.

3. **Changes.** The Department may request changes to the Work at any time prior to completion by a written communication to Company. The Company shall promptly provide the Department with a written acknowledgment of such request. This acknowledgment will include a statement of the price and time impact of the change, as well as a recapitulation of the time, materials, and equipment that would be added or deleted by the change. When the Department and the Company have agreed on the price and time impact, they shall execute a Change Order, incorporating the change into this Authorization. Should the Department and Company not come to an agreement on price and/or time impact, the Department shall be free to employ others to implement the desired change, and Company will provide reasonable accommodations so that the work can be done by others.
4. **Termination.** (a) Convenience Termination. At any time after the Effective Date, the Department may with fifteen (15) days notice to the Company, terminate this Authorization for the convenience of the Department. In the event of such termination, then the Department shall be liable to the Company for: (a) all costs incurred by Company up to the effective date of the termination, (b) the cost of terminating any purchase orders and subcontracts, rental agreements, employment contracts and the like, (c) Company's termination costs, including demobilization, severance pay, and relocation costs, plus (d) ten percent (10%) of the value of the terminated portion of the Authorization for unquantified damages. Company shall turn over to the Department, and shall provide any necessary documentation of transfer of title to, any goods which have been paid for by the Department under the preceding provisions. In no event shall the Department be obliged to pay any more than the Capital Project Price (as the same may have been amended from time to time by mutual agreement of the Parties) in the event of a termination under this paragraph.

(b) Default. In the event the Company substantially fails to execute the Work as required by this Authorization, despite notice and a reasonable opportunity to cure, then the Department may, with fifteen (15) days notice, terminate the remainder of the Authorization for Company default. In the event of such termination by the Department, then the Department may demand that Company leave the Site, and it may thereupon take whatever reasonable and prudent means are necessary to have the Work completed by others, charging the excess cost thereof to the Company's account.

(c) Termination of the Management Agreement. Should the Management Agreement be terminated before completion of the Capital Project, then this Authorization shall remain in effect until completion of the Work, and the applicable terms of the Management Agreement shall continue to apply as though the Management Agreement had not terminated, until the expiration of the warranty period.
5. **Warranty of Equipment, Materials, and Services.** Company warrants that the equipment, goods, and services provided to the Department under this Authorization shall be free from defects in design, process, material, and workmanship. Should any aspect of the Work prove defective within one year after completion of the Work, the Company shall promptly repair or replace the defective element, without cost to the Department. All manufacturers' warranties, to the extent practicable, shall be made assignable to the Department, and shall be enforced to the benefit of the Department, as appropriate.
6. **Audit.** Should any invoice submitted by Company contain cost or other quantitative data for Work which has been performed on a Unit Price or T&M basis, then Company shall maintain and retain all supporting documentation and calculations for not less than three (3) years after the completion of the Work or termination of the Management Agreement. The Department shall have the right at any reasonable time during that period and during normal business hours to inspect and audit those records by authorized representatives of its own or any third-party consultant selected by it.

Should the audit reveal any discrepancies in the finally invoiced amounts, Company shall refund any overpayments within sixty (60) days of notice thereof, without interest.
7. **Environmental Impacts.** Company agrees to notify the Department as soon as possible should it discover any hazardous material during the course of Company's activities or its subcontractors' activities in carrying out the Work. For the purpose of this clause, "hazardous material" means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act and "hazardous waste" as defined under the Resource Conservation and Recovery Act. If such contamination poses an immediate risk to human health or safety, or to the environment, Company shall immediately take all appropriate measures that in Company's professional opinion are justified to preserve and protect human health or safety, and the environment. Except for contamination caused by Company's willful or negligent conduct, the Department shall, on a "Change Order" basis, reimburse Company for all of Company's costs related to any measures taken to address immediate risks that threaten human health, human safety and the environment.

Each Party agrees to fully indemnify, defend, protect, hold harmless and render whole the other Party from and against any fines, penalties, costs or losses of any kind resulting from any contamination by the indemnifying Party, or those for whom it is responsible.

8. **Entire Agreement.** Along with the Management Agreement and the enumerated attachments, this Authorization comprises the entire agreement between the Parties with respect to the Capital Project and the Work. Accordingly, this Authorization supersedes all prior oral or written proposals, communications or other agreements related to the Capital Project, and it may only be changed by a written instrument, signed by authorized representatives of both Parties.

IN WITNESS WHEREOF, the Parties have properly executed this Authorization as of the dates indicated below.

The **Department:**

CONSOLIDATED CITY OF INDIANAPOLIS,

DEPARTMENT OF WATERWORKS

The **Company:**

VEOLIA WATER INDIANAPOLIS, LLC

BY: _____

PRINTED NAME: _____

TITLE: _____

EFFECTIVE DATE: _____

BY: _____

PRINTED NAME: CHUCK VOLTZ

TITLE: VICE PRESIDENT CENTRAL REGION

DATE SIGNED: _____

As to **Funding:**

CONTROLLER FOR THE CITY OF INDIANAPOLIS

Robert J. Clifford, Controller

Date

As to **Legal Form:**

OFFICE OF CORPORATION COUNSEL

Andrew I. Klineman, General Counsel

Date

ATTACHMENT A

DESCRIPTION OF WORK

CAPITAL PROJECT #: 2005-003 Amended

PROJECT TYPE: Infrastructure

CAPITAL PROJECT TITLE: White River Purification Plant 84 MGD Filter Upgrade

TASK ORDER ISSUED TO:

Veolia Water Indianapolis, LLC

PERIOD OF PERFORMANCE:

Start: January 1, 2005

Complete: February 6, 2006

WATER DISTRICT:

IW

DESCRIPTION OF WORK:

Upgrade underdrain system for four filters and install new filter media. Demolition and disposal of existing underdrain and filter media. Installation new filter underdrain systems. Installation of new anthracite and sand media. This project is a continuation of project 2003-403 and is part of a five-year project.

SCOPE OF WORK:

Upgrade 2 filters per year. The upgrade includes the demolition and replacement of the underdrain. Two filters consist of 4 bays approximately 18' x 60' x 2'. The underdrains are located at the base of each filter with an approximate 3.5' depth of media. All existing filter media will be removed and replaced. Each bay has approximately 4000 cubic feet of filter media consisting of gravel, sand and anthracite. The hydraulic design of the proposed replacement underdrain will allow for the elimination of support gravel. Replacement media will consist of sand and anthracite only. Air scour piping for better filter washing will also be installed.

PROJECT COST:

\$699,000 Time and Materials

PAYMENT SCHEDULE:

Monthly progress invoices

EXPECTED USEFUL LIFE OF PROJECT:

35-40 years

Capital Project Authorization Number: 2005-008

CAPITAL PROJECT TITLE: White River Boilers		
CAPITAL PROJECT NUMBER: 2005-008	TYPE OF PROJECT: Infrastructure	<input type="checkbox"/> DOW Funded Capital Project <input checked="" type="checkbox"/> Bond Funded Capital Project
ESTIMATED START DATE: April 19, 2005	ESTIMATED COMPLETION DATE: June 1, 2005	
CAPITAL PROJECT PRICE: \$274,579		
ATTACHMENTS: (A) Description of Work; (B) _____; (C) _____		

THIS AGREEMENT (also called the "Authorization"), is entered into as of the Effective Date indicated below, by and between **CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF WATERWORKS** and **VEOLIA WATER INDIANAPOLIS, LLC** (individually a "Party," and collectively the "Parties"),

WITNESS THAT:

WHEREAS, the Parties have, on March 21, 2002, executed the Management Agreement, which is hereby fully incorporated by reference into this Agreement (NOTE: capitalized terms used in this Agreement shall, unless otherwise specifically stated, be as defined in the Management Agreement), which shall take precedence in the event of any conflict between the terms hereof and those of the Management Agreement; and

WHEREAS, under the terms of the Management Agreement, the Company may be authorized from time to time by the Department, in exchange for the payment by the Department of a certain valuable consideration, to undertake certain Capital Projects as the Department may deem desirable; and

WHEREAS, the Company, when so authorized by the Department, is obliged to execute those Capital Projects in a timely, workmanlike, efficient manner, in full compliance with all Applicable Laws and Prudent Industry Practices; and

WHEREAS, the Parties hereby wish to memorialize their agreement on the particulars of a specific, authorized Capital Project.

NOW, THEREFORE, in consideration of the premises, covenants, agreements and undertakings hereinafter provided, the Parties hereby agree that:

1. **The Capital Project.** By this Authorization, the Department hereby authorizes and directs the Company to undertake and complete the Capital Project described in Attachment A (hereinafter referred to as the "Work"), and to exert its reasonable best efforts to complete the same by the Estimated Completion Date indicated above
2. **Method and Amount of Compensation.** In consideration of the foregoing, the Department shall compensate the Company the Capital Project Price, as the work progresses, in the following manner and amounts:

[] Unit Prices: _____

[X] Time and Materials: \$274,579

[] Lump Sum: _____

[] Combination/Other: _____

Explanatory Note (if req.): _____

PAYMENT: Department shall pay Company on a percentage-of-completion basis as the Work progresses. In no event shall the Department be required to pay for work not yet done.

Company shall submit progress invoices monthly during the course of the Work. Payment will be made by the Department within thirty (30) days of receiving an invoice. Each invoice shall be annotated with the Department's assigned project designation, and shall be in sufficient detail to allow reasonable analysis of the invoice by the Department.

Company accepts exclusive liability for payment of federal and state payroll taxes and for contributions for unemployment insurance, old age pensions, annuities, retirement, and other benefits, imposed under any provision of any law, and measured by remuneration paid or payable by Company to employees of Company engaged in the Project or in any

incidental operation. Company will require that each subcontractor who performs any part of the Project accept the same responsibility and liability with respect to employees of that subcontractor.

Contemporaneously with the Department's final payment to Company, Company shall provide the Department with a signed Waiver of Liens from itself and from each and every service provider, vendor, or subcontractor that has provided labor, services, materials or equipment in connection with the Project.

3. **Changes.** The Department may request changes to the Work at any time prior to completion by a written communication to Company. The Company shall promptly provide the Department with a written acknowledgment of such request. This acknowledgment will include a statement of the price and time impact of the change, as well as a recapitulation of the time, materials, and equipment that would be added or deleted by the change. When the Department and the Company have agreed on the price and time impact, they shall execute a Change Order, incorporating the change into this Authorization. Should the Department and Company not come to an agreement on price and/or time impact, the Department shall be free to employ others to implement the desired change, and Company will provide reasonable accommodations so that the work can be done by others.
4. **Termination.** (a) Convenience Termination. At any time after the Effective Date, the Department may with fifteen (15) days notice to the Company, terminate this Authorization for the convenience of the Department. In the event of such termination, then the Department shall be liable to the Company for: (a) all costs incurred by Company up to the effective date of the termination, (b) the cost of terminating any purchase orders and subcontracts, rental agreements, employment contracts and the like, (c) Company's termination costs, including demobilization, severance pay, and relocation costs, plus (d) ten percent (10%) of the value of the terminated portion of the Authorization for unquantified damages. Company shall turn over to the Department, and shall provide any necessary documentation of transfer of title to, any goods which have been paid for by the Department under the preceding provisions. In no event shall the Department be obliged to pay any more than the Capital Project Price (as the same may have been amended from time to time by mutual agreement of the Parties) in the event of a termination under this paragraph.

(b) Default. In the event the Company substantially fails to execute the Work as required by this Authorization, despite notice and a reasonable opportunity to cure, then the Department may, with fifteen (15) days notice, terminate the remainder of the Authorization for Company default. In the event of such termination by the Department, then the Department may demand that Company leave the Site, and it may thereupon take whatever reasonable and prudent means are necessary to have the Work completed by others, charging the excess cost thereof to the Company's account.

(c) Termination of the Management Agreement. Should the Management Agreement be terminated before completion of the Capital Project, then this Authorization shall remain in effect until completion of the Work, and the applicable terms of the Management Agreement shall continue to apply as though the Management Agreement had not terminated, until the expiration of the warranty period.
5. **Warranty of Equipment, Materials, and Services.** Company warrants that the equipment, goods, and services provided to the Department under this Authorization shall be free from defects in design, process, material, and workmanship. Should any aspect of the Work prove defective within one year after completion of the Work, the Company shall promptly repair or replace the defective element, without cost to the Department. All manufacturers' warranties, to the extent practicable, shall be made assignable to the Department, and shall be enforced to the benefit of the Department, as appropriate.
6. **Audit.** Should any invoice submitted by Company contain cost or other quantitative data for Work which has been performed on a Unit Price or T&M basis, then Company shall maintain and retain all supporting documentation and calculations for not less than three (3) years after the completion of the Work or termination of the Management Agreement. The Department shall have the right at any reasonable time during that period and during normal business hours to inspect and audit those records by authorized representatives of its own or any third-party consultant selected by it.

Should the audit reveal any discrepancies in the finally invoiced amounts, Company shall refund any overpayments within sixty (60) days of notice thereof, without interest.
7. **Environmental Impacts.** Company agrees to notify the Department as soon as possible should it discover any hazardous material during the course of Company's activities or its subcontractors' activities in carrying out the Work. For the purpose of this clause, "hazardous material" means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act and "hazardous waste" as defined under the Resource Conservation and Recovery Act. If such contamination poses an immediate risk to human health or safety, or to the environment, Company shall immediately take all appropriate measures that in Company's professional opinion are justified to preserve and protect human health or safety, and the environment. Except for contamination caused by Company's willful or negligent conduct, the Department shall, on a "Change Order" basis, reimburse Company for all of Company's costs related to any measures taken to address immediate risks that threaten human health, human safety and the environment.

Each Party agrees to fully indemnify, defend, protect, hold harmless and render whole the other Party from and against any fines, penalties, costs or losses of any kind resulting from any contamination by the indemnifying Party, or those for whom it is responsible.

8. **Entire Agreement.** Along with the Management Agreement and the enumerated attachments, this Authorization comprises the entire agreement between the Parties with respect to the Capital Project and the Work. Accordingly, this Authorization supersedes all prior oral or written proposals, communications or other agreements related to the Capital Project, and it may only be changed by a written instrument, signed by authorized representatives of both Parties.

IN WITNESS WHEREOF, the Parties have properly executed this Authorization as of the dates indicated below.

The **Department:**

CONSOLIDATED CITY OF INDIANAPOLIS,

DEPARTMENT OF WATERWORKS

The **Company:**

VEOLIA WATER INDIANAPOLIS, LLC

BY: _____

PRINTED NAME: _____

TITLE: _____

EFFECTIVE DATE: _____

BY: _____

PRINTED NAME: CHUCK VOLTZ

TITLE: VICE PRESIDENT CENTRAL REGION

DATE SIGNED: _____

As to **Funding:**

CONTROLLER FOR THE CITY OF INDIANAPOLIS

Robert J. Clifford, Controller

Date

As to **Legal Form:**

OFFICE OF CORPORATION COUNSEL

Andrew I. Klineman, General Counsel

Date

ATTACHMENT A

DESCRIPTION OF WORK

CAPITAL PROJECT #: 2005-008

PROJECT TYPE: Infrastructure

CAPITAL PROJECT TITLE: White River Boilers

TASK ORDER ISSUED TO:

Veolia Water Indianapolis, LLC

PERIOD OF PERFORMANCE:

Start: April 19, 2005

Complete: June 1, 2005

WATER DISTRICT:

IW

DESCRIPTION OF WORK: Replace two (2) boilers at White River

SCOPE OF WORK:

Purchase and install two (2) 80 hp 15 psi boilers (includes demo and removal of existing boilers, SS feedwater tank, demo and replace wall, install new fire door, wiring, piping, insulating, and start-up)

PROJECT COST:

\$274,579-Time and Materials

PAYMENT SCHEDULE:

Monthly progress invoices

EXPECTED USEFUL LIFE OF PROJECT:

20 years

Capital Project Authorization Number: 2005-056 Amended

CAPITAL PROJECT TITLE: South Well Field Station Finish Water Reservoir #2		
CAPITAL PROJECT NUMBER: 2005-056	TYPE OF PROJECT: Growth	<input type="checkbox"/> DOW Funded Capital Project <input checked="" type="checkbox"/> Bond Funded Capital Project
ESTIMATED START DATE: January 1, 2005	ESTIMATED COMPLETION DATE: October 31, 2005	
CAPITAL PROJECT PRICE: From \$711,000 to \$561,000		
ATTACHMENTS: (A) Description of Work; (B) <u>Requisition</u> ; (C) _____		

THIS AGREEMENT (also called the "Authorization"), is entered into as of the Effective Date indicated below, by and between **CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF WATERWORKS** and **VEOLIA WATER INDIANAPOLIS, LLC** (individually a "Party," and collectively the "Parties"),

WITNESS THAT:

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1. **The Capital Project.** By this Authorization, the Department hereby authorizes and directs the Company to undertake and complete the Capital Project described in Attachment A (hereinafter referred to as the "Work"), and to exert its reasonable best efforts to complete the same by the Estimated Completion Date indicated above
2. **Method and Amount of Compensation.** In consideration of the foregoing, the Department shall compensate the Company the Capital Project Price, as the work progresses, in the following manner and amounts:

[] Unit Prices: _____

[X] Time and Materials: _____ \$561,000

[] Lump Sum: _____

[] Combination/Other: _____

Explanatory Note (if req.): _____

PAYMENT: Department shall pay Company on a percentage-of-completion basis as the Work progresses. In no event shall the Department be required to pay for work not yet done.

Company shall submit progress invoices monthly during the course of the Work. Payment will be made by the Department within thirty (30) days of receiving an invoice. Each invoice shall be annotated with the Department's assigned project designation, and shall be in sufficient detail to allow reasonable analysis of the invoice by the Department.

Company accepts exclusive liability for payment of federal and state payroll taxes and for contributions for unemployment insurance, old age pensions, annuities, retirement, and other benefits, imposed under any provision of any law, and measured by remuneration paid or payable by Company to employees of Company engaged in the Project or in any incidental operation. Company will require that each subcontractor who performs any part of the Project accept the same responsibility and liability with respect to employees of that subcontractor.

Contemporaneously with the Department's final payment to Company, Company shall provide the Department with a signed Waiver of Liens from itself and from each and every service provider, vendor, or subcontractor that has provided labor, services, materials or equipment in connection with the Project.

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6. **Audit.** Should any invoice submitted by Company contain cost or other quantitative data for Work which has been performed on a Unit Price or T&M basis, then Company shall maintain and retain all supporting documentation and calculations for not less than three (3) years after the completion of the Work or termination of the Management Agreement. The Department shall have the right at any reasonable time during that period and during normal business hours to inspect and audit those records by authorized representatives of its own or any third-party consultant selected by it.

Should the audit reveal any discrepancies in the finally invoiced amounts, Company shall refund any overpayments within sixty (60) days of notice thereof, without interest.
7. **Environmental Impacts.** Company agrees to notify the Department as soon as possible should it discover any hazardous material during the course of Company's activities or its subcontractors' activities in carrying out the Work. For the purpose of this clause, "hazardous material" means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act and "hazardous waste" as defined under the Resource Conservation and Recovery Act. If such contamination poses an immediate risk to human health or safety, or to the environment, Company shall immediately take all appropriate measures that in Company's professional opinion are justified to preserve and protect human health or safety, and the environment. Except for contamination caused by Company's willful or negligent conduct, the Department shall, on a "Change Order" basis, reimburse Company for all of Company's costs related to any measures taken to address immediate risks that threaten human health, human safety and the environment.

Each Party agrees to fully indemnify, defend, protect, hold harmless and render whole the other Party from and against any fines, penalties, costs or losses of any kind resulting from any contamination by the indemnifying Party, or those for whom it is responsible.

8. **Entire Agreement.** Along with the Management Agreement and the enumerated attachments, this Authorization comprises the entire agreement between the Parties with respect to the Capital Project and the Work. Accordingly, this Authorization supersedes all prior oral or written proposals, communications or other agreements related to the Capital Project, and it may only be changed by a written instrument, signed by authorized representatives of both Parties.

IN WITNESS WHEREOF, the Parties have properly executed this Authorization as of the dates indicated below.

The **Department:**

CONSOLIDATED CITY OF INDIANAPOLIS,

DEPARTMENT OF WATERWORKS

The **Company:**

VEOLIA WATER INDIANAPOLIS, LLC

By: _____

PRINTED NAME: _____

TITLE: _____

EFFECTIVE DATE: _____

By: _____

PRINTED NAME: CHUCK VOLTZ

TITLE: VICE PRESIDENT CENTRAL REGION

DATE SIGNED: _____

As to **Funding:**

CONTROLLER FOR THE CITY OF INDIANAPOLIS

Robert J. Clifford, Controller

Date

As to **Legal Form:**

OFFICE OF CORPORATION COUNSEL

Andrew I. Klineman, General Counsel

Date

ATTACHMENT A

DESCRIPTION OF WORK

CAPITAL PROJECT #: 2005-056 Amended

PROJECT TYPE: Growth

CAPITAL PROJECT TITLE: South Well Field Station Finished Water Reservoir #2

TASK ORDER ISSUED TO:

Veolia Water Indianapolis, LLC

PERIOD OF PERFORMANCE:

Start: January 1, 2005

Complete: October 31, 2005

WATER DISTRICT:

IW

DESCRIPTION OF WORK:

Design and construct 4mg finish water reservoir and associated piping at identified location on the plant site. The structure will be a post-tensioned concrete tank similar to SWF reservoir #1.

SCOPE OF WORK:

Design and construct 4mg finish water reservoir and associated piping.

PROJECT COST:

\$561,000 – Time and Materials

PAYMENT SCHEDULE:

Monthly progress invoices

EXPECTED USEFUL LIFE OF PROJECT:

50 years

Capital Project Authorization Number: 2005-170 Amended B

CAPITAL PROJECT TITLE: Building, Pump Station and Treatment Plant Refurbishments

CAPITAL PROJECT NUMBER: 2005-170

TYPE OF PROJECT: Infrastructure

☒ **DOW Funded Capital Project**

☐ **Bond Funded Capital Project**

ESTIMATED START DATE: N/A

ESTIMATED COMPLETION DATE: N/A

CAPITAL PROJECT PRICE: From \$625,000 Allowance to \$725,000

ATTACHMENTS: (A) Description of Work; (B) _____;
(C) _____

THIS AGREEMENT (also called the "Authorization"), is entered into as of the Effective Date indicated below, by and between **CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF WATERWORKS** and **VEOLIA WATER INDIANAPOLIS, LLC** (individually a "Party," and collectively the "Parties"),

WITNESS THAT:

WHEREAS, the Parties have, on March 21, 2002, executed the Management Agreement, which is hereby fully incorporated by reference into this Agreement (NOTE: capitalized terms used in this Agreement shall, unless otherwise specifically stated, be as defined in the Management Agreement), which shall take precedence in the event of any conflict between the terms hereof and those of the Management Agreement; and

WHEREAS, under the terms of the Management Agreement, the Company may be authorized from time to time by the Department, in exchange for the payment by the Department of a certain valuable consideration, to undertake certain Capital Projects as the Department may deem desirable; and

WHEREAS, the Company, when so authorized by the Department, is obliged to execute those Capital Projects in a timely, workmanlike, efficient manner, in full compliance with all Applicable Laws and Prudent Industry Practices; and

WHEREAS, the Parties hereby wish to memorialize their agreement on the particulars of a specific, authorized Capital Project.

NOW, THEREFORE, in consideration of the premises, covenants, agreements and undertakings hereinafter provided, the Parties hereby agree that:

1. **The Capital Project.** By this Authorization, the Department hereby authorizes and directs the Company to undertake and complete the Capital Project described in Attachment A (hereinafter referred to as the "Work"), and to exert its reasonable best efforts to complete the same by the Estimated Completion Date indicated above
2. **Method and Amount of Compensation.** In consideration of the foregoing, the Department shall compensate the Company the Capital Project Price, as the work progresses, in the following manner and amounts:

[] Unit Prices: _____

[] Time and Materials: _____

[] Lump Sum: _____

[X] Combination/Other: _____

Explanatory Note (if req.): As noted on the Supplementary Capital Project Authorization Forms

PAYMENT: Department shall pay Company on a percentage-of-completion basis as the Work progresses. In no event shall the Department be required to pay for work not yet done.

Company shall submit progress invoices monthly during the course of the Work. Payment will be made by the Department within thirty (30) days of receiving an invoice. Each invoice shall be annotated with the Department's assigned project designation, and shall be in sufficient detail to allow reasonable analysis of the invoice by the Department.

Company accepts exclusive liability for payment of federal and state payroll taxes and for contributions for unemployment insurance, old age pensions, annuities, retirement, and other benefits, imposed under any provision of any law, and measured by remuneration paid or payable by Company to employees of Company engaged in the Project or in any incidental operation. Company will require that each subcontractor who performs any part of the Project accept the same responsibility and liability with respect to employees of that subcontractor.

Contemporaneously with the Department's final payment to Company, Company shall provide the Department with a signed Waiver of Liens from itself and from each and every service provider, vendor, or subcontractor that has provided labor, services, materials or equipment in connection with the Project.

3. **Changes.** The Department may request changes to the Work at any time prior to completion by a written communication to Company. The Company shall promptly provide the Department with a written acknowledgment of such request. This acknowledgment will include a statement of the price and time impact of the change, as well as a recapitulation of the time, materials, and equipment that would be added or deleted by the change. When the Department and the Company have agreed on the price and time impact, they shall execute a Change Order, incorporating the change into this Authorization. Should the Department and Company not come to an agreement on price and/or time impact, the Department shall be free to employ others to implement the desired change, and Company will provide reasonable accommodations so that the work can be done by others.
4. **Termination.** (a) Convenience Termination. At any time after the Effective Date, the Department may with fifteen (15) days notice to the Company, terminate this Authorization for the convenience of the Department. In the event of such termination, then the Department shall be liable to the Company for: (a) all costs incurred by Company up to the effective date of the termination, (b) the cost of terminating any purchase orders and subcontracts, rental agreements, employment contracts and the like, (c) Company's termination costs, including demobilization, severance pay, and relocation costs, plus (d) ten percent (10%) of the value of the terminated portion of the Authorization for unquantified damages. Company shall turn over to the Department, and shall provide any necessary documentation of transfer of title to, any goods which have been paid for by the Department under the preceding provisions. In no event shall the Department be obliged to pay any more than the Capital Project Price (as the same may have been amended from time to time by mutual agreement of the Parties) in the event of a termination under this paragraph.

(b) Default. In the event the Company substantially fails to execute the Work as required by this Authorization, despite notice and a reasonable opportunity to cure, then the Department may, with fifteen (15) days notice, terminate the remainder of the Authorization for Company default. In the event of such termination by the Department, then the Department may demand that Company leave the Site, and it may thereupon take whatever reasonable and prudent means are necessary to have the Work completed by others, charging the excess cost thereof to the Company's account.

(c) Termination of the Management Agreement. Should the Management Agreement be terminated before completion of the Capital Project, then this Authorization shall remain in effect until completion of the Work, and the applicable terms of the Management Agreement shall continue to apply as though the Management Agreement had not terminated, until the expiration of the warranty period.
5. **Warranty of Equipment, Materials, and Services.** Company warrants that the equipment, goods, and services provided to the Department under this Authorization shall be free from defects in design, process, material, and workmanship. Should any aspect of the Work prove defective within one year after completion of the Work, the Company shall promptly repair or replace the defective element, without cost to the Department. All manufacturers' warranties, to the extent practicable, shall be made assignable to the Department, and shall be enforced to the benefit of the Department, as appropriate.
6. **Audit.** Should any invoice submitted by Company contain cost or other quantitative data for Work which has been performed on a Unit Price or T&M basis, then Company shall maintain and retain all supporting documentation and calculations for not less than three (3) years after the completion of the Work or termination of the Management Agreement. The Department shall have the right at any reasonable time during that period and during normal business hours to inspect and audit those records by authorized representatives of its own or any third-party consultant selected by it.

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The **Department:**

CONSOLIDATED CITY OF INDIANAPOLIS,

DEPARTMENT OF WATERWORKS

The **Company:**

VEOLIA WATER INDIANAPOLIS, LLC

BY: _____

PRINTED NAME: _____

TITLE: _____

EFFECTIVE DATE: _____

BY: _____

PRINTED NAME: CHUCK VOLTZ

TITLE: VICE PRESIDENT CENTRAL REGION

DATE SIGNED: _____

As to **Funding:**

CONTROLLER FOR THE CITY OF INDIANAPOLIS

Robert J. Clifford, Controller

Date

As to **Legal Form:**

OFFICE OF CORPORATION COUNSEL

Andrew I. Klineman, General Counsel

Date

ATTACHMENT A

DESCRIPTION OF WORK

CAPITAL PROJECT #: 2005-170

PROJECT TYPE: Infrastructure

CAPITAL PROJECT TITLE: Building, Pump Station and Treatment Plant Refurbishments

TASK ORDER ISSUED TO:

Veolia Water Indianapolis, LLC

PERIOD OF PERFORMANCE:

Ongoing

WATER DISTRICT:

Project Specific

DESCRIPTION OF WORK:

Improvements for and refurbishment of buildings, pump stations, treatment plants and related facilities.

SCOPE OF WORK:

Design and construct improvements for and refurbishment of buildings, pump stations, treatment plants and related facilities. Specific projects will be submitted with the Supplementary Capital Project Authorization form.

PROJECT COST:

From \$625,000 to \$725,000 – approved limit for 2005.

PAYMENT SCHEDULE:

As noted on the Supplementary Capital Project Authorization form.

EXPECTED USEFUL LIFE OF PROJECT:

As noted on the Supplementary Capital Project Authorization form.